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Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Highlights

In the Manual

Health Insurance
A review of health insurance plans at 11:3101 is revised.

Contract Expirations
A list of contracts scheduled to expire in the second quarter of 2005 is added at 19:399.

Contract Settlements
Terms of settlements reported March 16-29 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:3921.

Washington-Baltimore Grocery Workers Agree to Lower Pay, Benefits for New Hires

Members of the United Food and Commercial Workers in the Baltimore-Washington, D.C., area March 30 ratified four-year agreements with Giant Food LLC and Safeway Stores Inc. that raise wages and maintain benefits for current employees, but establish reduced premium pay and benefits for workers hired after ratification.

The parties realized they either could reduce labor costs for both current employees and new hires, or try to maintain the status quo as much as possible for the existing workforce while making most changes for future employees, the companies' lead negotiator told BNA. "Both the union and we agreed that the best way to [reach those savings] was through new hires."

Under the virtually identical agreements, which cover about 18,000 Giant and 8,000 Safeway employees, starting pay remains $6.60 an hour and top pay remains $13.10 per hour. Wages for most employees increase by $1.25 per hour over term.

The wage progression for new hires, which had moved workers to a higher step every three months, now requires 520 hours of work before each step increase. In addition, new hires will receive a reduced premium for Sunday and holiday work initially—$1 per hour during their first year of employment, $1.50 per hour during the second year of employment, and $2 per hour for the third through fifth years—before moving to the time-and-one-half rate paid to current employees after five years.

Giant and Safeway agreed to maintain health care benefits at company expense. While employees will not have to make any premium contribution, the annual deductible increases from $100 to $200, the out-of-pocket maximum rises from $2,500 to $4,000, and prescription drug copayments rise.

New hires will be covered under a health care plan that does not provide dependent coverage for part-time employees, has a $300 annual deductible, and provides lesser benefits than those provided current employees in some other coverage areas. Full-time employees first become eligible for health care coverage after 12 months of service and part-time employees after 18 months. However, all new hires will be eligible to move to the same health care plan provided to current workers after six years of service.

The contract also maintains current pension benefits, with the supermarkets' monthly contribution for full-time workers increasing from $168.38 currently to $588.46 by April 2007.

ILA, Port Employers Reach Agreement Including Job Security, Narrowed Pay Gap

A guarantee that new jobs will go to union members and a narrowing of a two-tier wage gap highlight a tentative six-year master contract reached March 23 by the International Longshoremen's Association and major U.S. port employers represented by the U.S. Maritime Alliance. The agreement would cover about 15,000 East and Gulf Coast dockworkers, as well as 30,000 retirees whose pensions are funded through the master contract.

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The agreement would assure ILA jurisdiction over clerical jobs and container-checking positions and guarantee that any jobs created through the use of new technology will go to ILA members.

A two-tier pay system would remain in effect, but the lower-tier wage scale would move closer to the top-tier scale, achieving what the union called an important objective. Top-tier wages would rise $4 per hour over term, from $27 per hour to $31 per hour. Lower-tier wages, put in place in 1996 and ranging from $16 per hour to $21 per hour, would increase by $7 per hour to a range of $23 per hour to $28 per hour.

The tentative agreement also calls for guaranteed funding for local benefit plans and resolves a projected deficit in the industry's national health care plan. Workers would continue to be exempt from paying health insurance premiums, although the agreement would add a new ''starter'' health plan for employees working fewer than 700 hours per year. Employers would guarantee $5,000 towards health coverage for each employee in the starter plan, which is less than in the other two plans that cover employees working more hours per year, the union said.

The master agreement would cover workers employed on ''roll-on, roll-off'' cargo and containerized vessels and at ports from Maine to Texas. Workers who handle break and break-bulk cargo are covered by local contracts, which set wages and work rules at specific ports, according to ILA. Union members will vote on ratification of the master and local contracts once local bargaining has been completed—expected around June 1. If ratified, the master contract would replace the existing agreement, which is due to expire Sept. 30.

First Contract Ratified By Disney World Part-Timers

A first contract between Walt Disney World and the Service Trades Council covering about 6,100 part-time employees who work fewer than 25 hours per week at the Buena Vista, Fla., resort was ratified March 24.

The four-year contract, which is retroactive to Oct. 5, 2003, stems from a card-check provision in a 2001 agreement between the council and Disney covering about 25,000 full-time service employees (6 COBB 80, 7/12/01). That contract expires May 1.

Wages increase 2.5 percent retroactive to October 2003, 2.5 percent in October 2004, 2.75 percent in October 2005, and 3 percent in October 2006. The minimum hiring rate for labor grade three—the most common classification—is $6.70 per hour retroactive to October and will rise 10 cents per hour in October of 2004, 2005, and 2006. Most employees in grade three earned between $7 and $8 an hour before the first increase.

Workers are placed on a progression scale based on seniority, and all workers receive an initial increase of at least 35 cents per hour. However, many employees receive much higher increases as they are placed in the same grade as those classifications are in the full-time contract.

Language in the contract for the part-time employees mirrors the agreement for full-timers in several areas, including the grievance and seniority provisions, said the United Food and Commercial Workers, one of five unions that comprise the council. A me-too clause requires that any language changes negotiated in the full-time contract apply to the part-time agreement.

Pension benefits will be paid to all covered casual regular employees at the same rate as full-time regular employees, but casual employees are not eligible for health care benefits, according to the council.

IBEW, KeySpan Contracts Include Cooperation Pledge

A pledge of cooperation and preservation of employer-paid health care coverage are included in four-year contracts covering 2,785 employees of KeySpan Corp., a Long Island, N.Y., gas and electric utility.

The two agreements—one covering line workers, distribution workers, and laborers and the other covering customer service workers, clerical and technical workers, and meter readers—were ratified by International Brotherhood of Electrical Workers members March 17.

Escalating costs of health care benefits made negotiations difficult for both sides, the union said, but negotiators agreed to continue the company's point-of-service medical plan, dental plan, and prescription drug plan with no requirement for employee or retiree premium contributions. However, effective July 1, employee copayments for network office visits will increase from $15 to $20.

In an effort ''to engage workers in a collaborative way to drive change in the utility,'' the bargaining team crafted contract language to describe the position that beneficial changes for the company must benefit workers as well, the union said.

Employees receive wage increases of 3 percent retroactive to Feb. 14, and 3.5 percent Feb. 14 of 2005, 2006, and 2007. In addition, shift bonuses will increase 10 cents per hour each year. Over term, the hourly wage rate for working foremen will increase from $33.24 to $37.96.

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The pension plan now includes a ''rule of 80'' that allows employees to retire with unreduced pension benefits at age 55 or older with at least 25 years of service.

Pay Hike, Longer Progression Negotiated by Greyhound, ATU

Amalgamated Transit Union members at Greyhound Lines Inc. March 26 ratified a new 34-month contract that provides about 4,400 drivers and mechanics with a 2 percent wage increase March 1, 2006.

In addition, the agreement lengthens the wage progression schedule for new employees to reach the top rate, currently $19.85 for drivers. Under the new agreement, employees hired after March 27 will begin at 80 percent of top pay and receive 2 percent increases every six months until they reach the top rate.

The other area of major change in the contract involves employee and company contributions to cover the increasing cost of health-welfare benefits, the parties told BNA.

''The company pays more and the employee pays more, but overall the company bears a higher proportionate cost of health care than the employee,'' the company said, adding that Greyhound does not disclose the financial details of the health and welfare plan.

ATU said that small adjustments were made in certain areas of employee compensation to free up money to be transferred to health and welfare. For example, employees gave up about 12 cents an hour of the more than $10 an hour they earn in the so-called protection rate paid when they are called to work and are waiting for assignments. ''Everything we did give up went to health and welfare,'' the union said, distinguishing these contract changes from outright concessions.

FMCS Fosters Resolution Of Disputes Outside Contract

The number of workplace conflicts is growing, and new approaches are needed to address them, according to Federal Mediation and Conciliation Service Director Peter Hurtgen.

Through its new DyADS program, the agency will assist parties at unionized workplaces in developing an in-house system to resolve workplace disputes that go beyond those that are handled through the collective bargaining process, and include statutory and rights-based disputes and ''underlying problems,'' such as morale issues and workplace relationships, Hurtgen said.

''FMCS, by virtue of its neutral role and experience in the organized workplace, is uniquely positioned to assist its clients in determining their conflict resolution needs and goals and in facilitating internal dialogue on issues and options in dispute systems design,'' he told a session of the American Bar Association's Employment Rights and Responsibilities Committee meeting March 24 in Rancho Mirage, Calif.

The pilot effort of the new initiative is being developed at the Akron Medical Center, in Akron, Ohio, a 6,000-employee facility where half the workforce is unionized, Hurtgen said. With FMCS assistance, the center is creating a ''simple, flexible'' in-house system to resolve workplace disputes that are not within the boundaries of bargaining contracts.

A committee of five management representatives, five representatives from each of the two unions at the facility, and five representatives of the nonunion employees is creating the system internally ''with no outside consultants,'' Hurtgen said. The system, he emphasized, ''is not there to replace grievance procedures or to affect employees' statutory rights. It's not there to stop something, but to resolve disputes.''

A successful DyADS program, an acronym for dynamic, adaptive dispute systems, requires the inclusion of both labor and management, should be built up slowly, and be open to refinement over time, he said. To build systemic support and structures, it is ''most critical'' that the parties jointly develop ''an internal neutral function''—performed by either an individual or a committee—to coordinate and implement the program. ''The best practice includes an ombuds-type function,'' he said.

FMCS and its corps of about 250 mediators across the country are looking to expand the program. Several other companies have requested assistance in launching pilot projects, and Hurtgen urged conference participants to consider the program on behalf of their clients. ''We'll facilitate in establishing programs, supply technical assistance, and maybe even grants,'' he said.

The program currently is limited to unionized employers but may be expanded in the future, Hurtgen said.

News in Brief

Final Rule Under *Beck* Issued

The Labor Department's final regulation detailing federal contractors' requirements to post notices informing employees about the use of union dues as required by the U.S. Supreme Court's decision in *Communications Workers v. Beck*, 487 U.S. 735, 128 LRRM 2729 (1988), was published in the March 29 *Federal Register* (69 Fed. Reg. 16,376). DOL did not change its original conclusion that the rule's economic burdens on contractors are ''minimal.''

Weirton Workers Approve Accord

Members of the Independent Steelworkers Union ratified a five-year contract with International Steel Group Inc., the prospective buyer of bankrupt Weirton Steel Corp., the union said March 29. Under the agreement, which would take effect upon ISG's purchase of the West Virginia plant, about 1,000 jobs would be lost, bringing the workforce to about 2,100; the number of job categories would be compressed from 32 to five; hourly pay would increase from a range of $14 to $19.50 to a range of $16.39 to $22.40; and employees would be eligible for bonuses and profit-sharing (9 COBB 33, 3/18/04).

Number of Teleworkers Increasing

About 15 percent of the U.S. workforce—19.8 million people—work from home at least once a week, and that number is likely to grow as more Americans gain access to high-speed Internet and e-mail at home, the Employment Policy Foundation said in a March 11 report. While most teleworkers were self-employed or took work home to finish, 3.4 million people work at home as part of a formal relationship with their employer. The report is available at http://www.epf.org/research/newsletters/2004/ba20040311.pdf.

Work Stoppages Decline

The number of work stoppages involving 1,000 or more workers declined to 14 in 2003, but the lost workdays total for the year rose sharply to 4.1 million, the Bureau of Labor Statistics reported March 19. Both figures remained low by historic standards. The report is available at http://www.bls.gov/news.release/pdf/wkstp.pdf.

Facts & Figures

Hiring Outlook Shows Modest Improvement Through Spring

The hiring outlook continues to show modest signs of improvement through the spring of 2004, according to projections from 151 employers responding to BNA's latest quarterly employment survey.

Employer demand for production and service workers is expected to increase for the first time in almost two years. Overall, 15 percent of employers plan to hire new production and service workers in the second quarter of 2004, up from 11 percent the previous quarter but only marginally better than the proportion of employers anticipating staffing needs in this category one year ago (14 percent).

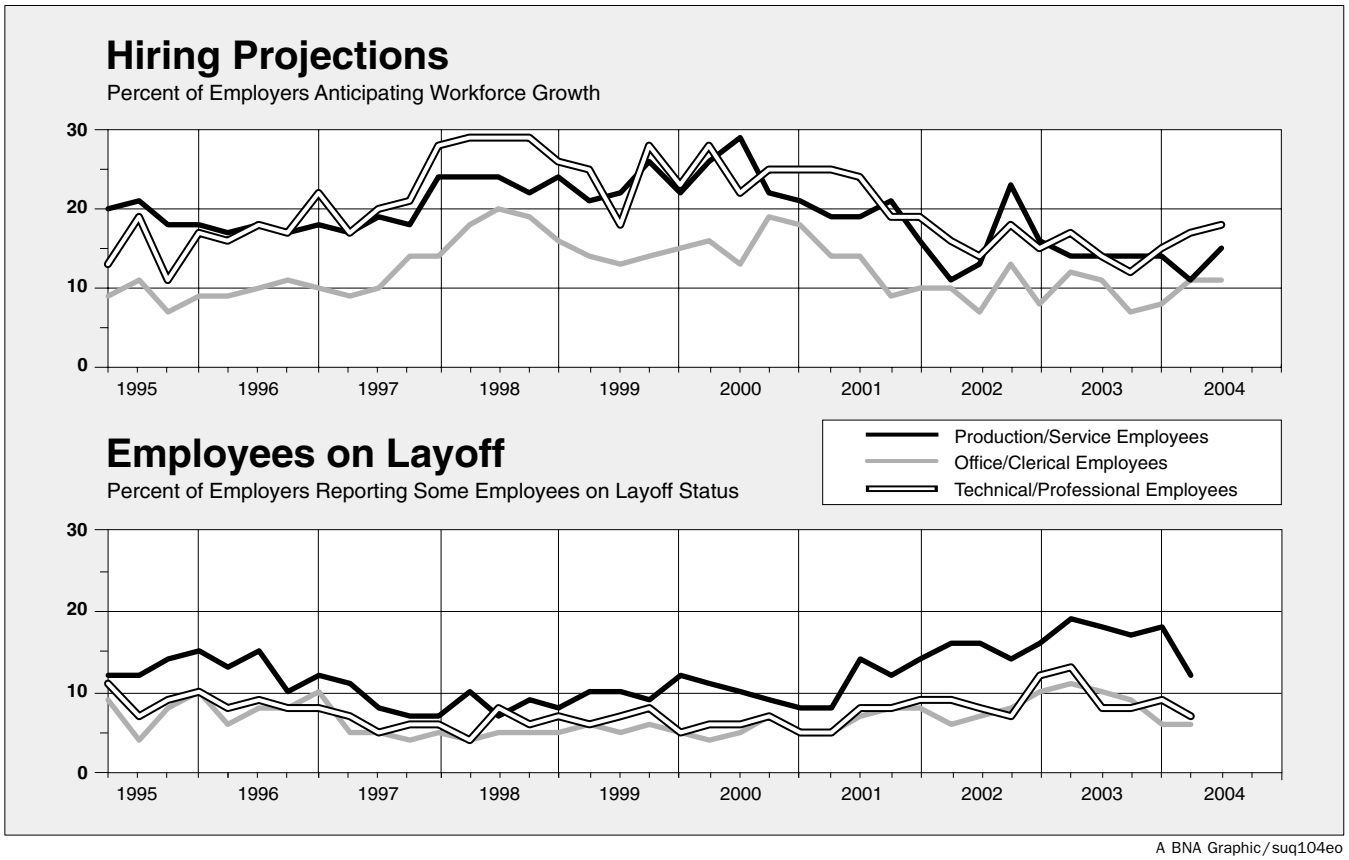
More encouraging for production and service workers is the fact that the second quarter projections signal boosts in hiring across the manufacturing (up 6 percentage points), nonmanufacturing (up 5 percentage points), and nonbusiness (up 4 percentage points) sectors.

Job prospects for office and clerical staff should remain stable in the second quarter of 2004, after falling to and rebounding from a 20-year low in the third quarter of last year. Just over one in 10 responding employers (11 percent) indicated plans to hire office and clerical workers through April, May, and June of this year—equivalent to last quarter's percentage but up from the near record lows of 8 percent and 7 percent reported in the preceding two quarters.

Employer hiring projections for technical and professional workers also remain strong in comparison with earlier quarters. Nearly one in five responding organizations (18 percent) plans to add technical and professional staff in the second quarter, up from 17 percent in the first quarter. The second-quarter figure represents the largest proportion of employers reporting staffing needs in this category in two years.

Twelve percent of surveyed employers reported having production and service workers on layoff during January and February, down from 18 percent last quarter and 19 percent one year ago. The incidence of employers with professional and technical employees on inactive status fell to 7 percent, down slightly from 9 percent last quarter but still substantially lower than 13 percent one year ago. While the percentage of employers with office and clerical staff on layoff was unchanged from last quarter at 6 percent, the figure is down sharply from 11 percent one year ago.

For more information, call BNA PLUS at 800-452-7773 or in Washington, D.C., call (202) 452-4323.



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Arbitrating the Contract

Worker Who Broke Safety Rule During Emergency Reinstated

An employee with 12 years' seniority and a nearly spotless disciplinary record saw a machine spraying oil onto hot equipment and onto her co-worker. Believing that the situation presented a serious fire hazard, the employee grabbed a wrench and climbed 12 feet up a scaffold, without a harness, to fix the problem by closing a valve. The company subsequently fired the employee.

A contract covering the employee stated that a worker ''may be discharged or otherwise disciplined'' for listed offenses, including violation of a safety rule.

The union filed a grievance, arguing that the employee had not willfully violated a safety rule, but rather had acted instinctively to alleviate an emergency.

The employer claimed that the employee had willfully violated a new ''zero tolerance'' safety rule that required her to use a harness while on the scaffold.

Award: An arbitrator sustained the grievance (*ExxonMobil*, 119 LA 366 (Allen, 2004)).

Discussion: The arbitrator stated that he was not unsympathetic to the employer's need to protect employees from falling. However, he found that the grievant reacted instinctively to what she regarded as an emergency situation, and that her reaction could not be considered willful disregard for a safety rule.

The grievant reasonably believed that there was an emergency that called for an immediate split-second decision, the arbitrator concluded, noting that both employer and union witnesses testified that spraying oil could create the risk of fire igniting.

The grievant had always been a safe and conscientious employee, and she was cooperative and honest during the employer's investigation, the arbitrator said, adding that, ''Those are factors that merit serious consideration in any termination case.''

The arbitrator also expressed ''significant doubt'' that the grievant was even aware of the harness rule, noting that she had been called out of a meeting where new fall protection requirements were discussed.

Finally, because the parties had agreed a worker ''may'' be discharged for violating a safety rule, the arbitrator found the incident was not an automatic termination offense.

Pointers: Failure to wear safety equipment has been the subject of several arbitration decisions.

For example, one arbitrator ruled that an employer lacked just cause to suspend an employee for 60 days for failing to secure himself with a harness, absent notice that such a lengthy suspension could result (*Morrison Constr. Co.*, 112 LA 276 (Brunner, 1999)).

In another case, an arbitrator held that there was just cause to fire an employee who repeatedly violated a rule requiring safety glasses to be worn (*Carrier Corp.*, 110 LA 1064 (Ipavec, 1998)).

Another arbitrator overturned the discharge of an employee who violated a rule that required safety gloves to be worn, where the employee could not read the rule because it was posted only in Spanish (*Smurfit Recycling Co.*, 103 LA 243 (Richman, 1994)).

An employer properly discharged a highway worker, who had been progressively disciplined, for refusing to wear a hard hat, another arbitrator found (*Knox County Engineer*, 89 LA 16 (Duda, 1987)).

An arbitrator upheld the discharge of a truck driver who had a history of injuries arising from his failure to wear safety equipment (*Vulcan-Hart Corp.*, 78 LA 59 (Ghiz, 1982)).

The discharge of an employee who chose to wear his own ear protection device instead of the employer's device was overruled by an arbitrator, who found both devices were approved by the Occupational Safety and Health Administration (*Manistee Drop Forge Corp.*, 62 LA 1164 (Brooks, 1974)).

The case discussion above is designed to illustrate how arbitrators resolve disputes. ''LA'' references are to BNA's weekly Labor Arbitration Reports. *For a discussion of safety and health issues, see CBNC chapter* Safety and Health *at 16:2501, and for sample contract language, see* Safety and Health; Smoking Restrictions *at 200:7501.*

Conferences

FMCS Arbitration Symposium, May 6-7, Atlantic City, N.J.; price: $100. Presented by the Federal Mediation and Conciliation Service, (202) 553-2773.

Increasing Effectiveness in Arbitration, May 10-12, New York, N.Y.; price: $1,395. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Effective Collective Bargaining Skills and Strategies, May 11-12, New York, N.Y.; price: $1,295. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Labor Relations for Managers: Managing Effectively in a Unionized Environment, May 12-13, Buffalo, N.Y.; price: $995. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

ADR: The Mediation Process, May 13, New York, N.Y.; price: $595. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

Effective Discipline: Best Practices for a Unionized Environment, May 18-19, Buffalo, N.Y.; price: $995. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Investigation Tools and Techniques: Developing Facts and Evidence, May 20, Buffalo, N.Y.; price: $595. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Winning Strategies in Labor Arbitration: Advanced Arbitration Advocacy Training, May 24, Las Vegas, Nev.; price: $139 until April 30, $189 after April 30. Presented by National Academy of Arbitrators, (607) 756-8365.

NAA Annual Meeting, May 25-27, Las Vegas, Nev.; price: $500 until April 30, $575 after April 30. Presented by National Academy of Arbitrators, (607) 756-8365.

National Labor-Management Conference, June 2-4, Chicago, Ill.; price: $445. Presented by Federal Mediation and Conciliation Service, (202) 553-2773.

In the Courts

Supreme Court, D.C. Circuit Let Stand Decisions

The U.S. Supreme Court March 22 refused to consider an appeals court's decision to overturn reinstatement of an airline pilot who was fired for harassing a co-worker by displaying a swastika and regularly carrying a dagger through an airport and onto the aircraft (*Air Line Pilots Ass'n v. American Eagle Airlines Inc.,* U.S., No. 03-847, *cert. denied*, 3/22/04).

In August 2003, the U.S. Court of Appeals for the Fifth Circuit found that an airline arbitration board exceeded its authority by reinstating the pilot, despite infractions the board said were ''abhorrent'' (8 COBB 99, 8/21/03). The arbitration board found the airline violated its collective bargaining agreement by skipping the ''first-step hearing'' after the pilot grieved the termination and, instead, going straight to arbitration.

The court said, however, that even if the failure to schedule the hearing breached the collective bargaining agreement, the failure happened after the pilot was fired for just cause. Because there was just cause for the firing, the board did not have the jurisdiction to reinstate him, the court decided, affirming a lower court's decision to vacate the board's ruling.

In its petition requesting Supreme Court review, the union said that while the appeals court cited the relevant legal principles authorizing only limited judicial review of arbitration decisions, the court's application of those principles was ''baffling.''

In addition, the court erred in deciding that the arbitration board could not consider the denial of a first-step hearing in determining whether there was just cause for the discharge, the union said. ''Because the [collective bargaining agreement] contains no definition of 'just cause,' it is the Board that must determine the meaning of that term.''

In its brief opposing review, the airline said the case does not merit the Supreme Court's attention because it is a fact-specific application of well-settled law. ''Certiorari is, therefore, not appropriate.''

Ruling on Blocking Access Stands

The U.S. Supreme Court March 22 let stand an appeals court decision that a general contractor violated federal labor law by attempting to block access to a construction site by union officials representing a subcontractor's workers (*Wolgast Corp. v. NLRB,* U.S., No. 03-883, *cert. denied* 3/22/04).

The company sought review of a September 2003 decision by the U.S. Court of Appeals for the Sixth Circuit upholding a National Labor Relations Board decision against the company.

The employer, a nonunion general contractor that hires both union and nonunion subcontractors, hired a firm that was party to a bargaining contract that stated union ''representatives shall have access to all jobs at all times where possible.''

On two consecutive days, a supervisor ordered union representatives off the site when they attempted to meet with an employee.

NLRB found that the employer violated the National Labor Relations Act by interfering with the union representatives' access to the worksite pursuant to a contract provision.

The Sixth Circuit agreed with the board that *Lechmere Inc. v. NLRB,* 502 U.S. 527, 139 LRRM 2225 (1992), in which the Supreme Court held that an employer was entitled to exclude nonemployee union organizers from its property unless either of two narrow exceptions applied, is ''readily distinguishable from this case.'' Here the union representatives ''sought access as the direct representative of the subcontractor's employees under the authority of the collective bargaining agreement,'' not in an attempt to organize employees.

In its petition for Supreme Court review, the company said the court recognized in *Lechmere* ''that there is a 'distinction of ''substance'' ' between the exercise of Section 7 rights by employees and those asserted derivatively by nonemployee union representatives.'' *Lechmere* reaffirmed the rule that, absent employee inaccessibility, an employer cannot be compelled to allow nonemployee union officials access to the workplace, the company argued.

The Solicitor General, arguing on behalf of the board, said the contractor ''made an affirmative business decision to hire a unionized subcontractor, rather than a non-union firm,'' and therefore ''is ill-positioned to claim an unfettered right to deny entry to union representatives, whose periodic visits to the jobsite are an aspect of the manner and means by which the subcontractor accomplishes its work.''

Workplace Practice Ruling Upheld

A company violated labor law by unilaterally eliminating a long-standing practice of allowing employees to donate blood during working hours, the U.S. Court of Appeals for the District of Columbia Circuit ruled March 16 (*Verizon N.Y. Inc. v. NLRB,* D.C. Cir., No. 03-1155, 3/16/04).

For many years, workers received full pay for up to four hours spent donating blood. After the company informed the union that it no longer would allow employees to use paid work time to donate blood, the union filed a grievance and demanded bargaining over the issue. The National Labor Relations Board decided that the policy was a mandatory subject of bargaining and that the union had not waived its bargaining rights (8 COBB 69, 6/12/03).

Upholding NLRB, the appeals court found no evidence that the union waived its right to bargain over the issue. Filing a grievance and demanding bargaining within three weeks of the announced change ''hardly constituted an undue delay on the union's part.''

The court also rejected the company's argument that its blood drive policy was not a mandatory subject of bargaining. The company ''permitted employees to receive wages for time not worked—up to four hours per blood drive twice a year—and to have these non-working hours counted as worktime,'' the court said, concluding that the practice clearly was germane to employment.

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